

C.C.R.B CASE CLOSING FORM

Investigator assigned: Shabazz		Team: 8	CCRB#: 9703208	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Courtesy <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Date of incident: 9/5/97	Time of incident: 8:30 AM	Location of incident: 107th Street and Second Ave	Pct. of occurrence: 023	Date S.O.L. Expires: 3/5/99
Date reported: 9/8/97	Time reported: 3:34 PM	To whom/where/how reported: To CCRB / Walk - In		
Complainant: § 87(2)(b)		Home address: § 87(2)(b)		
Victim(s): Complainant		Home address: Same as Above		
Witness(es): None		Home address:		
Subject officer(s) (include rank): Detective Rudy Zotter Detective John Flanagan Detective Christopher McCormak Captain James O'Neill		Shield: 04989 05620 05673 00000	Tax: 909931 890016 895704 908927	Command: Queens Warrant Section Manhattan Warrant Division Manhattan Warrant Squad Central Park Precinct
Witness officer(s) (include rank): NONE		Shield:	Tax:	Command:

ENCL. 1A

§ 87(2)(g)

Allegation(s) by letter:	Recommendation(s):
A. Captain O'Neill abused his authority when he stopped and frisked § 87(2)(b) without cause, in violation of Patrol Guide 116-33.	A. § 87(2)(g) [REDACTED]
B. Captain O'Neill abused his authority when he detained § 87(2)(b) in violation of PG 116-33.	B. § 87(2)(g) [REDACTED]
C. Det. Zoller abused his authority when he detained § 87(2)(b) without cause, in violation of Patrol Guide 116-33.	C. § 87(2)(g) [REDACTED]
D. Det. Flanagan abused his authority when he detained § 87(2)(b) without cause, in violation of Patrol Guide 116-33.	D. § 87(2)(g) [REDACTED]
E. Captain O'Neill used excessive force when he threw § 87(2)(b) onto the fence and kicked his legs and ankles apart, and grabbed and hit both of his testicles in the process of a search, in violation of Patrol Guide 104-01.	E. § 87(2)(g) [REDACTED]
F. A police officer was discourteous when he said to § 87(2)(b) "Hey you fucking moron..." in violation of Patrol Guide 104-01.	F. § 87(2)(g) [REDACTED]
G. Captain O'Neill threatened to use unnecessary physical force when he said to § 87(2)(b) "I'll rip your balls off," in violation of PG 104-01.	G. § 87(2)(g) [REDACTED]
H. Captain O'Neill was discourteous when he said to § 87(2)(b) "Shut the fuck up," in violation of Patrol Guide 104-01.	H. § 87(2)(g) [REDACTED]
I. A police officer was discourteous when he said to § 87(2)(b) "You are a real fucking jerk," in violation of Patrol Guide 104-01.	I. § 87(2)(g) [REDACTED]
J. Detective Zoller abused his authority when he refused to provide his shield number to § 87(2)(b) in violation of Patrol Guide 104-01.	J. § 87(2)(g) [REDACTED]
K. Detective McCormack abused his authority when he refused to provide his shield number to § 87(2)(b) in violation of Patrol Guide 104-01.	K. § 87(2)(g) [REDACTED]
L. Detective Flanagan abused his authority when he refused to provide his shield number to § 87(2)(b) in violation of Patrol Guide 104-01.	L. § 87(2)(g) [REDACTED]
M. Captain O'Neill abused his authority when he refused to provide his shield number to § 87(2)(b) in violation of Patrol Guide 104-01.	M. § 87(2)(g) [REDACTED]

Summary of Complaint

On September 5th, 1997 at 8:30 a.m. § 87(2)(b) was returning from § 87(2)(b) (110th street) where his daughter attends school. He was walking south on 2nd Ave. toward 106th street, when a white male called him from a van. The male said "hey you," and flashed his badge. The officer was not in uniform and was working out of a 10 passenger, unmarked gray van, NY Plate # § 87(2)(b). The officer asked him if he knew anything about a stolen bike or gun shots fired in the area. § 87(2)(b) said no to both questions and he began to walk away. The officer continued to question § 87(2)(b) asking him questions such as his name and address. § 87(2)(b) told the officer where he lived, and the officer asked him his date of birth. § 87(2)(b) restated that he did not know anything about a stolen bike, and he turned to walk away. P.O. #1 called over three plain-clothes officers; they grabbed § 87(2)(b) and frisked him along the side of a nearby fence.

§ 87(2)(b) states that P.O. #1 never touched him and in fact remained to his back, therefore invisible. However P.O. numbers 2,3, and 4 held him against the fence. § 87(2)(b) states that P.O. #2 kicked and searched him then pulled off his jacket, leaving it on the ground. While P.O. #2 searched him, P.O. #3 stood to his right and said, " Hey, you fucking moron, when police stop you, you don't have the

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right to leave, when we want to stop you and search you we can." When § 87(2)(b) asked for their badge numbers P.O. #2 said "Shut the fuck up or I'll rip your balls off." Then P.O. #2 kicked him again on both ankles, grabbed and hit both testicles. § 87(2)(b) said to the officer, "you're hurting me," the officer said again, "shut the fuck or I'll rip your balls off." § 87(2)(b) was asked to explain the difference between a kick and the police officer using his foot to spread apart a suspect's legs. § 87(2)(b) responded, "because I have been searched before."

§ 87(2)(b) stated that his face was bent over the top part of the fence and he could not see any people who may have been witnesses. When the police finished frisking § 87(2)(b) Officer #2 asked him questions about his daughter. The questions were phrased something like "how is your daughter," or how old is she." C/V was highly agitated, because he felt the questions were not sincere. He told the P.O., "My daughter has nothing to do with this," and the officer responded, "you're a real fucking jerk... a real asshole." § 87(2)(b) asked the officers for their shield number. In response one of the officers responded, "Shut the fuck up asshole." When the officers finished the frisk they entered the van and left the scene.

§ 87(2)(b) went into a local bodega and recorded the plate number of the van.

Results of Investigation

The investigation revealed that the plate number § 87(2)(b) provided was NYS § 87(2)(b). That particular plate was listed as van # 9522 according to the roll call for Manhattan Warrant Division. The detectives assigned to that vehicle were Det. Zotter, Det. Flanagan, and Det. McCormack. The undersigned ordered and received a photo-line up for each detective. On June 2, 1998, § 87(2)(b) reported to CCRB so he could attempt to identify the officers. § 87(2)(b) was presented with three sets of photo arrays. § 87(2)(b) was not able to identify any of the officers as being the individuals who stopped him on the day in question. § 87(2)(b) was not shown a photo array of Capt. O'Neill. Mr. Lebron made two appointments to review the photo-line up; however, he failed to appear on the dates he agreed upon.

§ 87(2)(g)

Both officers claimed that they did not recall the incident. During the interview of Det Zotter, the undersigned learned that Capt. O'Neill was his partner and supervisor during their tour. § 87(2)(g)

Captain O'Neill testified that he was working with Det. Zotter and Det. McCormack. The team had a warrant that they were attempting to execute at § 87(2)(b). Captain O'Neill said that Det. McCormack was inside the van, and Det. Zotter was with him. As they left the building, Det. McCormack pointed at § 87(2)(b) and said, "This guy has a bulge in his pocket. I think he has got a weapon." Capt. O'Neill testified that § 87(2)(b) did not want to be stopped and that he was verbally abusive throughout the encounter.

Capt. O'Neill said that they (the team) grabbed § 87(2)(b) arm, put him on the fence, and the search was conducted where the bulge was noticed. Capt. O'Neill stated that § 87(2)(b) legs had to spread apart so that he could conduct the search. Capt. O'Neill stated that he frisked § 87(2)(b) using the method he learned in the academy. Capt. O'Neill was asked to explain in detail the method he learned in

training. In response Capt. O'Neill said, "We had to make him uncomfortable and keep him off balance. I do not recall how we spread his legs." Capt. O'Neill said that if § 87(2)(b) were resisting, then he would use his feet to spread § 87(2)(b) legs apart. Capt. O'Neill denied kicking § 87(2)(b)

Capt. O'Neill denied saying, "Shut the fuck up or I'll rip your balls off." The captain stated that none of the police officers cursed at § 87(2)(b). Capt. O'Neill testified that he did not curse at § 87(2)(b) during the encounter. Capt. O'Neill stated the stop produced a can a mace on § 87(2)(b) person. According to Capt. O'Neill, § 87(2)(b) refused to cooperate with his questions. Capt. O'Neill stated that none of the officers on the scene cursed at § 87(2)(b). Captain O'Neill stated that § 87(2)(b) never asked him for his shield. Capt. O'Neill stated that § 87(2)(b) stepped in front of the van and copied down the license plate number

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) stated that police

officer #1 called over to three other officers after he was stopped. Capt. O'Neill testified that Det. McCormack motioned to him, and said, "This guy has a bulge in his pocket. I think he has got a weapon." § 87(2)(g)

§ 87(2)(b) stated that three police officers approached him shortly after Det. McCormack stopped him. Det. Zotter, who filed the stop and frisk report and Capt. O'Neill both testified that they conducted the stop and frisk. § 87(2)(b) stated that police officer #2 had the most interaction with him. Det. Zotter stated that Capt. O'Neill asked § 87(2)(b) if he could speak with him. Capt. O'Neill said that § 87(2)(b) refused to cooperate with his questions. § 87(2)(b) stated that police officer #2 conducted the search. Capt. O'Neill provided specific testimony in which he reluctantly discussed the methods he used when he searched § 87(2)(b) although he acknowledged conducting a search that produced a can of mace. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g) said that during the search Det. McCormack remained to his back. § 87(2)(g)

After the stop and

frisk was conducted, § 87(2)(b) was released.

Conclusions and Recommendations

§ 87(2)(b) alleged that he was stopped without cause. Det. Zotter and Capt. O'Neill claimed that they observed a bulge in his pocket. During his interview, Det. Zotter stated that Capt. O'Neill approached § 87(2)(b) and started engaged him in conversation. According to Det. Zotter, § 87(2)(b) would not talk to the Capt. O'Neill. In fact, § 87(2)(b) statement concerning the events leading up to the frisk was exactly the same as Det. Zotter's testimony. Det. Zotter also stated that, "For safety purposes, § 87(2)(b) was placed on the fence." Additionally, Det. Zotter, and Capt. O'Neill stated that a can of mace was recovered after the search. § 87(2)(b) stated that they found a small utility knife in one of his pockets.

§ 87(2)(g)

Det. Zotter and Capt. O'Neill stated that § 87(2)(b) started to walk away and refused to cooperate with their questions. § 87(2)(b) testified that as he tried to walk away from one officer, three different officers forced him over to a nearby fence. Neither Det. Zotter nor Capt. O'Neill articulated a reason why they escalated this encounter to frisk and search. § 87(2)(b) was not under investigation at the time. In fact, the officers were conducting an investigation in a nearby building. § 87(2)(b) was not wanted on a warrant nor was he suspected of committing a crime. None of the officers said that § 87(2)(b) was acting suspiciously. § 87(2)(g)

§
87
(2)
(g)

(9) § 87(2)(b) alleged that excessive force was used when Capt. O'Neill kicked apart his legs at the ankles, and grabbed and hit both testicles. § 87(2)(b) said that he has been frisked by different police officers in the past, and based on his experience he contended that Capt. O'Neill was rougher than usual. Capt. O'Neill testified that § 87(2)(b) had to be placed on the fence because he was not cooperating with his orders. Capt. O'Neill said that he was taught in the academy to make the suspect uncomfortable and off balance during the stop. However, Capt. O'Neill denied using excessive force.

§ 87(2)(b) stands at 5'9," weighs 130 pounds, and appeared to be extremely frail during his interview. Capt. O'Neill is 6'2," and weighs 210 pounds, Det Flanagan is 6 feet tall and weighs 200 pounds, Det. McCormack is 6 feet tall and weighs 190 pounds, and Det. Zotter is 6 feet tall, and weighs 170 pounds. § 87(2)(g)

Since § 87(2)(b) back was to the police officers, he stated that he did not get a good look at the officers who frisked him. § 87(2)(b) said that he would be able to identify them if he saw them in a photo line up. § 87(2)(b) was presented with photographs of Det. Zotter, Det McCormack, and Det. Flanagan. § 87(2)(b) was unable to identify any of the officers. § 87(2)(b) alleged that one of the officers said, "Hey you fucking moron. When the police stop you, you do not have the right to leave..." Without a positive identification, this officer remained unidentified. § 87(2)(g)

§ 87(2)(g)

After the frisk was completed, § 87(2)(b) stated that one of the officers attempted to engage him in conversation. § 87(2)(b) did not believe the officer was being sincere and so he showed the officer contempt. The officer stated, "You are a real fucking jerk." § 87(2)(b) could not identify which officer made the statement because his back was still facing the officers. § 87(2)(g)

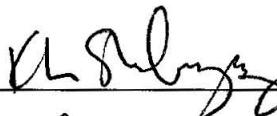
§ 87(2)(b) stated that he asked the officers for their shield numbers as the officers were leaving the scene. One of the officers told § 87(2)(b) to take a walk. According to § 87(2)(b) the officers entered the van and left the area. § 87(2)(b) testified that he committed the van's plate number to memory and went into a bodega to write it down. Capt. O'Neill stated that § 87(2)(b) stepped in front of the van and wrote the plate number down. Capt. O'Neill said that § 87(2)(b) did not ask for any of the officers shield numbers. § 87(2)(g)

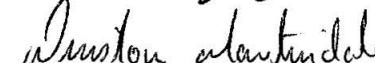
§ 87(2)(g)

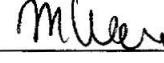
§ 87(2)(g)



INVESTIGATOR'S NOTES: Capt. O'Neill was a lieutenant at the time of this incident.

Investigator: Khari Shabazz  Date: 9/28/98

Supervisor: Winston Martindale  Date: 9/30/98

Reviewed by: Dianne Weisheit  Date: 9/30/98 C

Reviewed by: _____ Date: _____